

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

|   |   |                             |
|---|---|-----------------------------|
| In the matter of the amendment of ARM       | ) | NOTICE OF PUBLIC HEARING ON |
| 17.50.501 through 17.50.503, 17.50.508,     | ) | PROPOSED AMENDMENT,         |
| 17.50.509, and 17.50.513; the adoption of   | ) | ADOPTION, AND REPEAL        |
| New Rules I through XXV; and the repeal of) |   |                             |
| ARM 17.50.505, 17.50.506, 17.50.510,        | ) | (SOLID WASTE)               |
| 17.50.511, 17.50.526, 17.50.530,            | ) |                             |
| 17.50.531, 17.50.542, 17.50.701,            | ) |                             |
| 17.50.702, 17.50.705 through 17.50.710,     | ) |                             |
| 17.50.715, 17.50.716, and 17.50.720         | ) |                             |
| through 17.50.726 pertaining to the         | ) |                             |
| licensing and operation of solid waste      | ) |                             |
| landfill facilities                         | ) |                             |

TO: All Concerned Persons

1. On May 14, 2008, at 1:00 p.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., May 5, 2008, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail [rmartin@mt.gov](mailto:rmartin@mt.gov).

3. The department is proposing to adopt New Rule I into ARM Title 17, chapter 50, subchapter 5, and the new subchapters listed below into ARM Title 17, chapter 50. The department is proposing to adopt New Rules II through V as New Subchapter I; New Rules VI through XI as New Subchapter II; New Rules XII through XVI as New Subchapter III; New Rules XVII through XXI as New Subchapter IV; and New Rules XXII through XXV as New Subchapter V.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.50.501 PURPOSE AND APPLICABILITY (1) and (2) remain the same.  
(3) ~~These rules apply to~~ All applicants, licensees, owners, and operators of solid waste management systems and facilities shall comply with ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V], except as otherwise specifically provided in this subchapter ~~ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V].~~ Wherever there is a requirement imposed on an

owner or operator in ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V], the licensee shall also comply with that requirement.

~~(4) The effective dates of ARM 17.50.506 and 17.50.511(1)(e) and (g) are extended until April 9, 1994, as they apply to existing landfill units and lateral expansions to existing units that meet the following requirements:~~

~~(a) the unit disposed of less than 100 tons per day of solid waste between October 9, 1991, and October 9, 1992;~~

~~(b) the unit does not dispose of more than an average per month of 100 tons per day of solid waste between October 9, 1993 and April 9, 1994; and~~

~~(c) the unit is not on the national priorities list (NPL) as found in 40 CFR, part 300, appendix B.~~

(4) Whenever a person, including an applicant or owner or operator, is required in ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V] to submit a document for department approval of an action, the person may not take the action for which the submission is required unless the person first submits a document containing all information necessary for the department to determine if the action complies with the requirements of ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V], and obtains department approval.

~~(5) Existing MSWLF units that meet the requirements for the small community exemption found in ARM 17.50.506(16) or the requirements of (4) of this rule that receive waste after October 9, 1993, and stop receiving waste prior to April 9, 1994, are only subject to the final cover requirements found in ARM 17.50.530. Final cover must be installed by October 9, 1994. Owners or operators that fail to complete cover installation by October 9, 1994, are subject to all of the requirements of this subchapter unless otherwise specified. When authorized by either a court order or an agreement between the department and a landowner on whose property a violation of ARM Title 17, chapter 50, subchapters 5 through [NEW SUBCHAPTER V] has occurred, the department may act, either directly or through a third party, to physically remediate a violation of ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V].~~

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The proposed amendments to ARM 17.50.501(3) are necessary to provide an express rather than an implied requirement that all applicants, licensees, owners, and operators of solid waste management systems and facilities are required to comply with the requirements of ARM Title 17, chapter 50, subchapters 4 through New Subchapter V. The existing rules in subchapter 5 are based on EPA regulations found in 40 CFR Part 258. The Environmental Protection Agency (EPA) does not license facilities, but a solid waste management facility in Montana may not operate without a license under Montana law pursuant to 75-10-221, MCA. Therefore, it is necessary to add language making it clear that licensees are required to comply with the solid waste rules. There are requirements for the application and design process that applicants must meet prior to the construction of, and receipt of waste at, a facility, and the additional word "applicant" clarifies that the rules apply to applicants also.

The language proposed for deletion in (4) and (5) refers to effective dates for certain rules. The effective dates of some rules in the subchapter were delayed to allow smaller systems time to come into compliance or close. These effective dates have long since passed and all of the rules in the subchapter are currently applicable.

The new language that would be added to (4) provides an express rather than an implied requirement that, whenever a person is required to submit a document to the department for approval of an action, the person making the submission may not take the action requested in the submission until it is approved by the department. The proposed language is necessary to allow the department to ensure that the document contains all necessary information and ensure that the action complies with the rules.

17.50.502 DEFINITIONS In addition to the terms defined in 75-10-203, MCA, as used in this subchapter, the following terms shall have the meanings or interpretations shown below:

(1) remains the same.

(2) "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with ~~ARM 17.50.530~~ [NEW SUBCHAPTER V].

~~(3) "Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with ARM 17.50.530.~~

(4) remains the same, but is renumbered (3).

(4) "Contaminated soil" means soil, dirt, or earth that has been made impure by contact, commingling, or consolidation with organic compounds such as petroleum hydrocarbons. This definition does not include soils contaminated solely by inorganic metals, soils that meet the definition of hazardous waste as defined under ARM Title 17, chapter 53, or regulated PCB (polychlorinated biphenyls) contaminated soils.

~~(5) "Aquifer" means any geologic formation, group of formations, or part of a formation capable of yielding significant quantities of ground water to wells or springs.~~

~~(6)~~ (5) "Clean fill" means soil, dirt, sand, gravel, rocks, and rebar-free concrete, emplaced free of charge to the person placing the fill, in order to adjust or create topographic irregularities for agricultural or construction purposes.

~~(7) "Closed unit" means any solid waste disposal unit, trench, cell or area that no longer receives solid waste and has been closed in accordance with department rules.~~

~~(8)~~ (6) "Closure" means the process by which an owner or operator of a facility closes all or part of a facility in accordance with a department-approved closure plan and all applicable closure requirements specified in ~~ARM 17.50.530~~ [NEW SUBCHAPTER V].

~~(9) "Compacted soil liner" means recompacted native or amended soil with a minimum thickness of 3 feet with adequate moisture content and compaction to achieve a hydraulic conductivity of less than or equal to  $1 \times 10^{-7}$  cm/sec.~~

~~(10) "Commercial waste" means all types of solid wastes generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, and~~

~~non-processing wastes such as office and packing wastes generated at industrial facilities.~~

~~(11) "Conditionally exempt small quantity generator wastes (CESQG wastes)" means wastes from a generator defined in ARM 17.54.401(4)(c).~~

~~(12) "Construction and demolition waste" means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures, once municipal, household, commercial and industrial wastes have been removed.~~

~~(13) remains the same, but is renumbered (7).~~

~~(14) "Cost" means all expenses associated with the permitting, licensing, design, construction, environmental compliance, operation, maintenance, ground water monitoring, corrective action, closure and post-closure care of any facility.~~

~~(15) "Director" means the chief administrative officer of the department of environmental quality.~~

~~(16) "Disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.~~

~~(17) "EPA" means the United States environmental protection agency.~~

~~(18) "Existing unit" means any solid waste disposal unit that is receiving solid waste as of October 9, 1993. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.~~

~~(19) (8) "Facility" means a manufacturing, processing, or assembly establishment; a transportation terminal; or a treatment, storage, recycling, recovery, or disposal unit operated by a person at one site. The term includes all contiguous land and structures, other appurtenances, and improvements on the land (licensed or unlicensed) ever used for the storage, treatment, recycling, recovery, or disposal of solid waste or for corrective action associated with such operations.~~

~~(20) and (21) remain the same, but are renumbered (9) and (10).~~

~~(22) "Ground water class" means a ground water quality classification established in ARM 17.30.1002.~~

~~(23) "Ground water quality standards" means the standards for ground water quality set forth in ARM 17.30.1003.~~

~~(24) (11) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA), as amended, and codified at 42 USC 6901 through 6992k. The term includes, but is not limited to, waste resulting from the following manufacturing processes:~~

- ~~(a) electric power generation;~~
- ~~(b) fertilizer/agricultural chemicals;~~
- ~~(c) food and related products/byproducts;~~
- ~~(d) inorganic chemicals;~~
- ~~(e) iron and steel manufacturing;~~
- ~~(f) leather and leather products;~~
- ~~(g) nonferrous metals manufacturing/foundries;~~
- ~~(h) organic chemicals;~~
- ~~(i) plastics and resins manufacturing;~~
- ~~(j) pulp and paper industry;~~

(k) rubber and miscellaneous plastic products;

(l) stone, glass, clay, and concrete products;

(m) textile manufacturing;

(n) transportation equipment; and

(o) water treatment.

~~(25) "Infectious waste" means waste defined in 75-10-1003(4), MCA.~~

~~(26) (12) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal. The term does not include manure spreading operations.~~

(27) remains the same, but is renumbered (13).

~~(28) (14) "Lateral expansion" means a horizontal expansion of:~~

~~(a) the waste licensed boundaries of an existing disposal unit facility; or~~

~~(b) an existing disposal unit.~~

(29) remains the same, but is renumbered (15).

~~(16) "Leachate collection system" means an engineered structure, located above a liner and below the refuse in a landfill unit, designed to collect leachate.~~

~~(17) "Leachate removal system" means an engineered structure that allows for the removal of leachate from a landfill unit. A leachate removal system may be, but is not necessarily, used in conjunction with a leachate collection system.~~

~~(18) "Licensee" means a person or persons who has or have been issued a license to operate a solid waste management system by the department.~~

(30) remains the same, but is renumbered (19).

~~(31) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.~~

(32) remains the same, but is renumbered (20).

~~(33) "Municipal solid waste landfill unit (or MSWLF unit)" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.~~

~~(34) "New unit" means any solid waste disposal unit that has not received waste prior to October 9, 1993.~~

~~(35) "Open burning" means the combustion of solid waste without:~~

~~(a) control of combustion air to maintain adequate temperature for efficient combustion;~~

~~(b) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and~~

~~(c) control of the emission of the combustion products.~~

(36) through (38) remain the same, but are renumbered (21) through (23).

~~(24) "Person" has the meaning given in 75-10-203, MCA.~~

~~(25) "Post-closure care" means the minimum 30-year period of landfill care after the completion of closure where all aspects of the landfill containment,~~

extraction, control, and monitoring systems are inspected, operated, and maintained in accordance with a department-approved post-closure plan and all applicable requirements in [NEW SUBCHAPTER V].

(26) "RCRA" means the federal Solid Waste Disposal Act, as amended by and hereinafter referred to as the Resource Conservation and Recovery Act of 1976 and subsequent amendments, codified at 42 USC 6901 through 6992k.

(27) "Residue" means the waste material remaining after processing, incineration, composting, recovery, or recycling have been completed. Residues are usually disposed of in landfills.

~~(39) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.~~

~~(40) "Refuse container" means a portable facility used for the temporary storage of solid waste. Containers are emptied periodically and the solid waste is then taken to a disposal or resource recovery facility.~~

~~(41) "Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in 40 CFR 261.5.~~

~~(42) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.~~

~~(43) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.~~

~~(44) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.~~

~~(45) remains the same, but is renumbered (28).~~

(29) "Special waste" has the meaning given in 75-10-802, MCA.

(30) "Solid waste" has the meaning given in 75-10-203, MCA.

~~(46) "Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during the preliminary treatment of domestic sewage in a treatment plant.~~

~~(47) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.~~

~~(48) "Solid waste management system" as defined in 75-10-203, MCA, means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. In addition, for the purposes of this definition, the department does not consider a container site to be a component of a solid waste~~

management system.

~~(49) "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of a solid waste management system that is necessary for protection of human health and the environment.~~

~~(50) remains the same, but is renumbered (31).~~

~~(51) "Transfer station" means a solid waste management facility that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles (public, commercial or private) and placed in other transportation units for movement to another solid waste management facility.~~

~~(52) (32) "Unit" means a discrete area of land or an excavation used for the landfilling or other disposal of solid waste with either:~~

~~(a) a contiguous liner; or~~

~~(b) a contiguous cover.~~

~~(53) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.~~

~~(54) remains the same, but is renumbered (33).~~

~~(55) "Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.~~

~~(56) remains the same, but is renumbered (34).~~

~~(57) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.~~

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: Many existing definitions in ARM 17.50.502 would be moved to the proposed new subchapters where the particular terms are used, and they are being proposed for deletion here. Definitions of contaminated soil, leachate collection system, leachate removal system, licensee, person, post-closure care, RCRA, special waste, and residue are proposed to be added because those terms are used in the rules in this subchapter, and the definitions are needed to provide clarity to the substantive requirements in the rules.

The proposed amendment to the definitions of active life and closure would update the citation for closure activities. The existing rule, ARM 17.50.530, is proposed to be deleted and New Subchapter V would now address closure activities.

The proposed amendment to the definition of facility would include recycling and waste recovery. These activities are included in the definition of "solid waste management system" in 75-10-203, MCA. The amendments are necessary because the department is planning to adopt rules for the licensing of recycling and waste recovery facilities.

The proposed amendment to the definition of industrial solid waste refers to the definition in RCRA. The amendment clarifies the definition, but does not change the meaning.

The proposed amendment to the definition of land application unit removes the exclusion for manure spreading operations from the first sentence of the definition and adds it as a separate sentence at the end of the definition. The revision clarifies the definition, but does not change the meaning.

The proposed amendment to the definition of lateral expansion modifies the existing definition, which is the same as the federal definition in 40 CFR 258.2, to include an expansion of a facility's licensed boundaries or of an existing unit. This recognizes that Montana licenses facilities, which EPA does not. The proposed amendment is necessary to clarify what constitutes a lateral expansion in Montana. A lateral expansion triggers measurements for submissions by the owner, operator, or licensee, and requires review and possible approvals by the department.

The proposed amendment to the definition of unit clarifies the definition, but does not change the meaning.

17.50.503 WASTE GROUPS (1) Solid wastes are grouped based on physical and chemical characteristics which determine the degree of care required in handling and disposal and the potential of the wastes for causing environmental degradation or public health hazards. Solid wastes are categorized into 3 three groups:

(a) Group II wastes include decomposable wastes and mixed solid wastes containing decomposable material but exclude regulated hazardous wastes. Examples include, but are not limited to, the following:

(i) remains the same.

(ii) commercial and industrial solid wastes such as packaging materials, liquid or solid industrial process wastes ~~which~~ that are chemically or biologically decomposable, contaminated soils, crop residues, manure, chemical fertilizers, and emptied pesticide containers ~~which~~ that have been triple rinsed or processed by methods approved by the department.

(b) through (2) remain the same.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The proposed addition of contaminated soils to the Group II waste list would expressly recognize that contaminated soils are not inert and that they may not be managed as Group III or IV wastes. As Group II wastes, they must either be landfarmed to reduce the concentration of petroleum compounds, or disposed of at a Class II landfill with its more rigorous requirements, including liners, caps, and monitoring, for isolating waste from ground water and the environment.

17.50.508 APPLICATION FOR SOLID WASTE MANAGEMENT SYSTEM LICENSE ~~(1) Any owner or operator wishing to establish a solid waste management system shall first submit an original application and 3 copies for a license to the department. The application must be signed by the person~~



responsible for the overall operation of the facility. The department shall furnish application forms to interested persons. Such forms shall require at least the following information Prior to disposing of solid waste or operating a solid waste management system, or lateral expansion, a person shall submit to the department for approval an application for a license to construct and operate a solid waste management system. The applicant shall use the application form provided by the department. The applicant shall provide the following information:

(1) through (9) remain the same, but are renumbered (a) through (i).

~~(10) (j) geological, hydrological, and soil information, including at least the following:~~ as specified in [NEW RULE XX];

~~(a) Class II disposal facilities must submit geological, hydrological, and soil information that includes the following at a minimum:~~

~~(i) a hydrogeological and soils study as specified in ARM 17.50.705;~~

~~(ii) types and regional thickness of unconsolidated soils materials;~~

~~(iii) types and regional thickness of consolidated bedrock materials;~~

~~(iv) regional and local geologic structure, including bedrock strike and dip, and fracture patterns;~~

~~(v) geological hazards including but not limited to slope stability, faulting, folding, rockfall, landslides, subsidence, or erosion potential, that may affect the design and operation of the facility for solid waste management;~~

~~(vi) depth to and thickness of perched ground water zones and uppermost aquifers;~~

~~(vii) information regarding any domestic wells within one mile of the site boundary, including well location, well depth, depth to water, screened intervals, yields and aquifers tapped;~~

~~(viii) an evaluation of the potential for impacts to existing surface water and ground water quality from the proposed facility for solid waste management;~~

~~(b) transfer station and Class III and Class IV disposal facility applications must include sufficient soils, hydrologic and geologic information so that the department can evaluate the proposed safety and environmental impact of the proposed design;~~

~~(c) a ground water monitoring plan or a demonstration meeting the requirements of ARM 17.50.723 must be submitted for Class IV disposal facilities.~~

(11) and (12) remain the same, but are renumbered (k) and (l).

(m) a regional map (minimum scale of 1:62,500 and a minimum size of 8 1/2 inches by 11 inches) that delineates existing and proposed collection, processing, and disposal systems, the location of the closest population centers, and the local transportation systems including highways, airports, and railways;

(n) a vicinity map (minimum scale of 1:24,000 and a minimum size of 8 1/2 inches by 11 inches) that delineates zoning and existing and allowed land use, residences, surface waters, access roads, bridges, railroads, airports, historic sites, and other existing and proposed human-made or natural features relating to the project within one mile of the facility boundaries;

(o) a site plan (minimum scale of 1:24,000 with five foot contour intervals and a minimum size of 8 1/2 inches by 11 inches) that delineates property lines, proposed landfill boundary, the location of existing and proposed soil borings, monitoring wells, buildings and appurtenances, fences, gates, roads, parking areas,

drainages, culverts, storage facilities or areas, and loading areas, existing and proposed elevation contours and direction of prevailing winds, and the location of residences, potable wells, surface water bodies, property lines, and drainage swales located within the site and in the site plan area;

(p) a map indicating state waters, wetlands, and floodplains within 1,000 feet of the site;

(q) a landfill design plan pursuant to [NEW RULE XVII];

~~(13) site maps and plans, drawn to a convenient common scale, that show the location and dimensions of any planned excavations, buildings, roads, fencing, access, or other structures proposed on-site;~~

~~(14) in addition to the above required site plan, all facilities which manage Group II waste must submit technical design specifications and a site plan that includes the following:~~

~~(a) the type, quantity, and location of any material that will be required for use as a daily and intermediate cover over the life of the site and facility;~~

~~(b) the type and quantity of any material that will be required for use as liner material or final cover, including its compaction density and moisture content specifications, the design permeability, and construction quality control and construction quality assurance plans;~~

~~(c) the location and depth of cut for any liners;~~

~~(d) the location and depths of any proposed fill or processing areas;~~

~~(e) the location, dimensions, and grades of any surface water diversion structures;~~

~~(f) the location and dimensions of any surface water containment structures, including those designed to impound contaminated runoff leachate, sludge, or liquids for evaporative treatment;~~

~~(g) the location of any proposed monitoring points for surface water, ground water quality, and explosive gases;~~

~~(h) the location, type, and dimensions of any fencing to be placed on-site;~~

~~(i) the final contours and grades of any fill surface after closure;~~

~~(j) the location of each discrete phase of development;~~

~~(k) the design details and specifications of any final cap, liner, and leachate collection and removal system, including construction quality control and assurance plans and testing for construction of these elements of design;~~

~~(l) a location map showing all the proposed structures and areas for unloading, baling, compacting, storage, and loading, including the dimensions, elevations, and floor plans for these structures and areas, including the general process flow; and~~

~~(m) the design details and specifications of the facility's drainage, septic and water supply systems;~~

~~(15) through (18) remain the same, but are renumbered (r) through (u).~~

~~(19) (v) closure and post-closure care plans; and~~

(20) (w) for Class II and Class IV solid waste management facilities, a copy of the proposed financial assurance required by ARM 17.50.540;

(x) a copy of a proposed deed notation that meets the requirements in [NEW SUBCHAPTER II]; and

(y) any other information determined by the department to be necessary to protect human health or the environment. The department may request an applicant to supplement an application to provide information referred to in the previous sentence.

(2) An applicant shall submit with the application a copy of a proposed policy of general liability insurance to cover bodily injury or property damage to third persons caused by sudden accidental occurrences at the facility that meets the requirements of [NEW RULE VIII].

AUTH: 75-10-204, 75-10-221, MCA

IMP: 75-10-204, 75-10-221, MCA

REASON: Existing (10)(a), concerning specific geologic information for Class II disposal facilities, is redundant and is similar to the proposed requirements for the soils and hydrologic study required at Class II facilities in New Rule XX. It is therefore being proposed for deletion.

Existing (10)(b), concerning geologic information at transfer stations and Class III and IV disposal facilities, would become redundant because proposed New Rule XX would require all facilities to submit adequate geologic information for department evaluations. It is therefore being proposed for deletion.

Existing (10)(c), concerning the ground water monitoring plan or no-migration demonstration for Class IV facilities, would become redundant with the proposed adoption of New Rule XI concerning operation and maintenance of Class IV facilities. It is therefore being proposed for deletion.

The minimum scales proposed to be added for each type of map in new (1)(m) through (o) would provide appropriate detail for site evaluation and are common scales for maps obtainable from the U.S. Geological Survey. The maps are necessary for the department to evaluate potential environmental impacts to surrounding properties and the controls necessary to protect the environment.

Proposed new (1)(w) would clarify that only Class II and IV landfill facilities must provide a copy of a financial assurance mechanism.

Section (14) would be deleted because there is no reason why only Class II facilities should be required to submit technical specifications and detailed drawings for department evaluation of potential environmental impacts. The other types of facilities should have their technical specifications and drawings reviewed also for evaluation of potential environmental impacts. Existing (14)(a) through (m) would be replaced by equivalent design requirements proposed in New Rule XVI.

Applicants would be required by new (1)(x) to provide a copy of the deed notation indicating that a facility was used for waste disposal. The applicant would need to obtain approval of the deed notation as part of the license application review process so that the proper notation would be recorded by the licensee prior to the acceptance of waste at the facility. See New Rule VIII(10). The department has experienced problems with licensees failing to record deed notations at closure of landfills, and has been forced to litigate to require land owners to record notations. This is wasteful of the department's resources and could lead to a person buying a former landfill property without being fully aware that the land contains a landfill. It is simpler and wiser to require an owner to record a notation when the owner has an

incentive to do so. The owner can accept waste and receive payment for doing so only after a notation has been recorded.

New (1)(y), which would authorize the department to require other information in a license application if necessary to protect human health or the environment, is necessary because circumstances or knowledge not contemplated at the time the rule was drafted may be relevant to the protection of human health or the environment, and the department needs the authority to be able to require additional information.

An applicant would be required by new (2) to submit, with a license application, a copy of a policy of liability insurance for sudden accidental occurrences at the facility. It is important that a licensee demonstrate that it will have insurance coverage for bodily injury or personal damages to ensure the financial health of the facility. Solid waste management facilities can be dangerous places with trucks and other heavy machinery in close proximity to small vehicles and people unloading refuse. A claim made against a facility that has no or inadequate insurance could jeopardize the financial stability of the facility and interfere with its ability to comply with this chapter. The owner would be required under New Rule VIII(11) to provide proof that a policy was in effect before waste could be accepted.

#### 17.50.509 OPERATION AND MAINTENANCE PLAN REQUIREMENTS

(1) remains the same.

(2) The operation and maintenance plan ~~shall~~ must include:

(a) through (f) remain the same.

(g) types of waste the proposed facility will accept; ~~and~~

(h) a plan for reclamation closure of the disposal facility and the land's ultimate use as required under ARM 17.50.530. Title 17, chapter 50, [NEW SUBCHAPTER V];

(i) any methane monitoring plans required under ARM 17.50.514 Title 17, chapter 50, [NEW SUBCHAPTER II];

(j) any ground water monitoring plans required under ARM 17.50.701, et seq. Title 17, chapter 50, [NEW SUBCHAPTER IV]; and

(k) any plans required for composting or for handling of special waste streams including, but not limited to:

(i) compost;

(ii) contaminated soil;

(iii) asbestos-contaminated material;

(iv) biosolids;

(v) infectious wastes; or

(vi) any other special waste determined by the department to require a handling plan to protect human health or the environment;

(l) any other plans or information on alternative daily cover required in [NEW RULE VIII]; and

(m) any other plans or information determined by the department to be necessary to protect human health or the environment.

(3) The owner, operator, or licensee shall, every five years after the issuance of the solid waste management system license and also within 45 days after the

department notifies the owner or operator that an update is necessary to protect human health or the environment, update the operation and maintenance plan to reflect changed conditions and requirements, and submit the update to the department for approval.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: Subsections (2)(h) through (j) are being proposed for amendment to update citations. The proposed addition of new (2)(l), concerning alternative daily cover, is necessary to conform this rule to New Rule VIII.

New (2)(k)(vi) and (m) are being proposed for amendment to make it clear that the department may require additional information or plans if it determines that they are necessary to protect human health and the environment. The reasons for this were discussed in the reason for ARM 17.50.508.

Proposed new (3), which would require licensees, owners, or operators to update the operation and maintenance (O & M) plan for a facility every five years and as necessary to reflect changed conditions and requirements, is necessary because waste management is not a static activity. The originally approved O & M plan can become outdated and may require a revision when circumstances or requirements change at the facility. In five years much can change, so it is reasonable to require an update at least that frequently. It is also reasonable for the department to be able to require an owner or operator to update an O & M plan if circumstances change to the point that the department believes an updated plan is necessary to protect human health or the environment before five years have elapsed. It is reasonable for the owner or operator to be required to submit an update within 45 days after being requested to do so. Forty-five days is sufficient time for the update to be prepared and submitted.

17.50.513 PROCESSING OF SOLID WASTE MANAGEMENT SYSTEM LICENSE APPLICATION (1) The department ~~will~~ shall review each submitted application within 60 days to insure that ~~ensure~~ it is ~~completed~~ complete as defined in Title 75, chapter 1, part 2, MCA. The department shall notify the local health officer as required in 75-10-222, MCA. The department shall complete public scoping, if necessary, during the 60-day period. If additional information is required the application is incomplete, the department will ~~shall~~ notify the applicant in writing within 15 days after the initial review is completed and will ~~shall~~ postpone processing the application until the additional information requested material necessary to complete the application is received and the application is determined to be complete. If the requested additional information is not received within 90 days after the applicant has been notified, a new application and application fee must be submitted.

(2) ~~Within 15 days after receipt of the completed application, the department shall notify in writing the local health officer in the county where the proposed solid waste management system will be located. The department shall review the completed~~ complete application and other relevant information and make a proposed decision based on the applicant's apparent ability to comply with the act

and this subchapter applicable laws and rules, and determine the need for an environmental impact statement (EIS), within the time limits found in Title 75, chapter 1, part 2, MCA.

~~(3) A public notice will then be prepared by the department to explain its proposed decision. It shall be circulated in the following manner: one copy to the applicant, and 3 copies shall be mailed to the public health officer along with instructions that they be posted at the nearest post office and 2 other public buildings serving the geographical area of the proposed system. At least 1 news release shall be prepared and sent by the department to an area newspaper. The department has adopted rules relating to the Montana Environmental Policy Act in ARM Title 17, chapter 4, subchapter 6. The environmental review process for the department's proposed action must follow these rules.~~

~~(4) The purpose of the public notice is to inform the public and seek their views on the proposed license. The notice shall state the name and address of the applicant, the proposed location of the solid waste management facility, and the department's proposed decision. The public shall be informed that it has 30 days from the date of the public notice to submit written comments to the department concerning the license application. Interested persons may obtain copies of the completed complete application and the department's environmental assessment or EIS, proposed decision, and final decision upon request, by enclosing the copying costs. The requirements of ARM Title 17, chapter 4, subchapter 6, apply to any public notice or public meetings concerning an environmental assessment or EIS.~~

~~(5) After the comment period has expired, the department will shall make its final decision and then notify in writing the applicant, the local health officer, the applicant and any other interested persons who have requested to be notified. If the department decides to issue the license, the requirements of 75-10-222 and 75-10-223, MCA, apply to the local health officer has up to 15 days within which to validate the license with his signature. If he refuses to validate the license, he must notify the department, the applicant and any other interested persons in writing. His decision must be based only on whether the application complies with the act and this subchapter.~~

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The existing rule was first adopted in 1972 and amended in 1974 and 1977. The subchapter has not been amended since 1977. The department adopted new rules to implement the Montana Environmental Policy Act (MEPA) in 1989 and the Legislature put time limits on the time allowed to process applications in 2001. These proposed amendments are necessary to update the rule to conform to the department rules concerning MEPA and the current requirements of the law.

The proposed amendments to (1), which require that the department conduct a completeness review of applications and public scoping, if needed, within 60 days, are necessary to ensure that the time limits of Title 75, chapter 1, part 2, MCA, are met. If an application is complete, the department has 90 days under 75-1-208, MCA, to complete an environmental assessment (EA). The proposed amendments to (1), which place an affirmative duty on the department to review applications,

notify the applicant of additional information needed, and require that applicants pay an additional fee if they do not respond in a timely manner to the department's request for additional information, are necessary to ensure timely processing of applications and timely response from applicants.

The proposed amendments to the language in (2), which require the department to complete an EA within the time required by law, are necessary to ensure that timely responses to complete applications are made. One of the purposes of an EA is to determine if an EIS is necessary, and the proposed amendment would allow the department to make the determination and prepare an EIS in the time required by law.

The proposed amendments to (3) and (4), which concern public notification of a proposed licensing decision, would clarify those sections, but do not change their meaning. The department is proposing to delete some of the text, and instead have the rule cite the laws or rules that contain the relevant requirements.

The proposed amendments to (5) would reference the statutory requirements (75-10-222 and 75-10-223, MCA) concerning the notification, validation, and refusal of validation of the local health officer. The proposed amendments are necessary because the language proposed to be deleted does not include all of the requirements contained in the referenced statutes, so by deleting the incomplete language and citing statutes and rules, the regulated community has a more complete statement of the application review process.

5. The proposed new rules provide as follows:

NEW RULE I CLASS II LANDFILL UNIT RESEARCH, DEVELOPMENT, AND DEMONSTRATION PLANS

(1) Except as provided in (6), the department may approve a research, development, and demonstration plan included as a condition in the license for a new Class II landfill unit, existing Class II landfill unit, or lateral expansion for which the licensee proposes to utilize innovative and new methods that vary from either or both of the following criteria provided that the Class II landfill unit has a leachate collection system designed and constructed to maintain less than a 30-centimeter depth of leachate on the liner:

(a) the run-on control systems in 40 CFR 258.26(a)(1), as adopted by reference in [NEW RULE VI]; and

(b) the liquids restrictions in 40 CFR 258.28(a), as adopted by reference in [NEW RULE VI].

(2) The department may approve a research, development, or demonstration plan for a new Class II landfill unit, existing Class II landfill unit, or lateral expansion, for which the licensee proposes to utilize innovative and new methods which vary from the final cover criteria of 40 CFR 258.60(a)(1), (a)(2), and (b)(1), as adopted by reference in [NEW RULE XXII], provided the licensee demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of ground water or surface water during the operating life and post-closure care monitoring period, or cause leachate depth on the liner to exceed 30 centimeters.

(3) Any plan approved under this rule must include terms and conditions that are at least as protective as the criteria for Class II landfill units to assure protection of human health and the environment. Such plans must:

(a) provide for the construction and operation of such landfill units for not longer than three years, unless renewed pursuant to (5);

(b) provide that the Class II landfill unit may receive only those types and quantities of municipal solid waste and nonhazardous wastes that the department determines appropriate for effectiveness and performance of the technology or process;

(c) include requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the department with respect to the operation of the landfill unit;

(d) require the submittal of an annual report to the department. The report must include a summary of all monitoring and testing results, progress in attaining project goals, and any other operating information required by the department in the approved plan; and

(e) require compliance with all applicable criteria in ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V], except as approved under this rule.

(4) The department may request a licensee, and a licensee of a landfill unit operating under a plan approved under this rule shall comply with such a department request, to immediately terminate all operations or take appropriate corrective measures if the department determines that there is:

(a) a risk to human health or the environment; or

(b) significant noncompliance with either:

(i) the research, development, and demonstration plan; or

(ii) required corrective measures.

(5) An applicant for renewal of a plan approved under this rule shall include with its application for renewal a detailed assessment of the progress in achieving project goals, a list of problems and status with respect to problem resolution, and any other requirements that the department determines necessary to protect human health or the environment.

(6) The term of a plan approved under this rule may not exceed three years, and that of a renewal of an approved plan may not exceed three years.

(7) The total term for an approved plan for a project including renewals may not exceed twelve years.

(8) A licensee of a Class II facility operating under the small community exemption pursuant to [NEW RULE XIII] is not eligible for a variance, as provided by this rule, from 40 CFR 258.26(a) and 40 CFR 258.28(a).

(9) A licensee of a Class II facility that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, is not eligible for a variance from 40 CFR 258.60(b)(1), except in accordance with 40 CFR 258.60(b)(3), as adopted by reference in [NEW RULE VI].

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

**REASON:** The federal standards for research, development, and demonstration of municipal solid waste landfill (MSWLF) units are provided in 40 CFR 258.4. The proposed rule would allow the department to approve alternative designs and operational practices to further research and development goals.



Research and development is necessary to test new ideas to better design and operate landfills.

The proposed rule provides that a license for a research and development unit may be issued only for a new Class II landfill unit, existing Class II landfill unit, or lateral expansion designed and constructed with a leachate collection system that maintains no more than 30-centimeters depth of leachate on the liner. EPA has determined that the requisite demonstration of no increased risk to human health and the environment cannot be made unless the landfill unit is constructed with a leachate collection system designed to maintain no more than a 30-centimeter depth of leachate.

The proposed rule follows the EPA requirements with the exception of minor language changes for conformity with department practices. For instance, the department issues licenses and approvals, not permits, for solid waste management facilities.

**NEW RULE II ADOPTION OF FEDERAL LANDFILL LOCATION RESTRICTIONS** (1) Except as provided otherwise in [NEW RULE IV and V], the department adopts and incorporates by reference 40 CFR Part 258, subpart B, pertaining to landfill location restrictions.

(2) Except where inconsistent with the definitions in this chapter, the definitions in 40 CFR 258.2 are adopted and incorporated by reference.

(3) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2006, edition of the Code of Federal Regulations (CFR).

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at <http://www.gpoaccess.gov/cfr/index.html>. Copies of the CFR are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

**NEW RULE III DEFINITIONS** In this subchapter, the following terms have the meanings or interpretations shown below:

(1) "Class II landfill facility" has the meaning given in ARM 17.50.504.

(2) "Class III landfill facility" has the meaning given in ARM 17.50.504.

(3) "Closure" has the meaning given in ARM 17.50.502.

(4) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(5) "Destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(6) "Disposal" has the meaning given in 75-10-203, MCA.

(7) "Endangered or threatened species" means any species listed as such pursuant to section 4 of the federal Endangered Species Act of 1973.

- (8) "Facility" has the meaning given in ARM 17.50.502.
- (9) "Landfill" has the meaning given in ARM 17.50.502.
- (10) "Lateral expansion" has the meaning given in ARM 17.50.502.
- (11) "Post-closure care" has the meaning given in ARM 17.50.502.
- (12) "Solid waste management system" has the meaning given in 75-10-203, MCA.
- (13) "Unit" has the meaning given in ARM 17.50.502.
- (14) "Wetlands" has the meaning given in 40 CFR 232.2.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

NEW RULE IV EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL LANDFILL LOCATION RESTRICTIONS (1) Whenever there is a reference in this subchapter to a section of the CFR that contains the term "MSWLF unit," the term means a Class II or lined Class IV landfill unit.

(2) Whenever there is a reference in this subchapter to a section of the CFR that contains the phrase "state director" or "director of an approved state," the phrase means the department.

(3) The requirements of 40 CFR 258.14(a) are replaced with: "(a) A new Class II or lined Class IV landfill unit or lateral expansion may not be located in a seismic impact zone, unless the owner or operator submits to the department for approval a report prepared by a Montana licensed professional engineer demonstrating that all landfill containment structures including, but not limited to, the landfill liner, leachate collection system, gas control system, landfill final cover, and surface water control system, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. An owner or operator of an existing Class II or lined Class IV landfill unit shall, within 45 days after being requested by the department to do so, submit to the department for approval the report required in the previous sentence. The owner or operator shall place the report in the operating record and notify the department that it has been placed in the operating record."

(4) The introductory paragraph of 40 CFR 258.15(a) is replaced with: "(a) An applicant for a license for a new Class II or lined Class IV landfill unit or a lateral expansion located in an unstable area shall submit to the department for approval, with the application, a report prepared by a Montana licensed professional engineer demonstrating that the unit is designed to ensure that the integrity of the structural components of the unit will not be disrupted. An owner or operator of an existing Class II or lined Class IV landfill unit shall, within 45 days after being requested by the department to do so, submit to the department for approval the report required in the previous sentence. The owner or operator shall place the approved report in the operating record and notify the department that it has been placed in the operating record. The owner or operator shall consider the following factors, and any other factor determined by the department to be necessary to protect human health or the environment when determining whether an area is unstable:"

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

NEW RULE V MONTANA-SPECIFIC LOCATION RESTRICTIONS (1) The owner or operator of a landfill facility shall comply with the following general locational requirements:

(a) a sufficient amount of land must be available to satisfy the approved design, operation, and capacity of any solid waste management system, including adequate separation of wastes from underlying ground water or adjacent surface water;

(b) local roads must be capable of providing access in all weather conditions and local bridges must be capable of supporting vehicles with maximum rated loads;

(c) a facility must be located in a manner that does not allow the discharge of pollutants in excess of state standards for the protection of state waters, public water supply systems, or private water supply systems. The department may, if necessary to protect human health or the environment, impose additional conditions for sensitive hydrogeological environments including, but not limited to, sole-source aquifers, well-head protection areas, or gravel pits;

(d) drainage structures must be installed to control surface water run-off from waste management areas and prevent surface water run-on into waste management areas;

(e) a facility must be located to allow for closure, post-closure care, and planned uses of the land after the post-closure period;

(f) a facility must confine solid waste, methane gas, and leachate to the disposal facility, unless the owner or operator submits a request for department approval for treatment at another facility;

(g) a facility may not be located in wetlands or riparian areas;

(h) a facility or solid waste management activity may not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife;

(i) facility or solid waste management activity may not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17; and

(j) any other locational requirement determined by the department to be necessary to protect human health or the environment.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: Proposed New Rules II through V would comprise New Subchapter I. The department is proposing the repeal of the existing solid waste program landfill location rules and the adoption of a new subchapter, written in an incorporation by reference (IBR) format, that contains new landfill location rules. The proposed new rules are equivalent to the existing landfill location rules. The new rule format would incorporate by reference sections of the CFR, and lists a few "Montana-specific" rules. The format change is being proposed for the following reasons:

(a) the incorporation of future changes to the federal solid waste management regulations into Montana's rules would be much easier. The incorporation of new federal regulations would be accomplished by annually updating the CFR publication date in New Rule II(3);

(b) the "Montana-specific" requirements would be easier to recognize. The "Montana-specific" requirements are listed separately following the IBR statement in each new subchapter; and

(c) the existing solid waste management program rules contain much unnecessarily repeated statutory language, which would be deleted.

The definitions in New Rule II are being proposed for the same reasons as set forth in the statement of reasonable necessity for the amendments to ARM 17.50.502.

New Rule IV(3) and (4), concerning areas with seismic activity or that are unstable, would make two changes to the federal regulations that they modify. Section (3) would add the requirement that a report by a professional engineer, stating that the landfill containment structures were designed to withstand local seismic conditions, be submitted by an applicant for a new Class II or lined Class IV landfill unit or lateral expansion, or, by an owner or operator of an existing unit, within 45 days after being requested to do so by the department and (4) would add a requirement that an applicant for a license for a new Class II or lined Class IV landfill unit or lateral expansion in an unstable area shall submit, with the application, a report on stability by a professional engineer. Section (4) would also require that an owner or operator of an existing Class II or lined Class IV landfill unit or lateral expansion in an unstable area shall submit, with the application, a report on stability by a professional engineer, within 45 days after being requested to do so by the department. The reports must be prepared by a professional engineer because only such a person is qualified to know whether the containment structures are designed to withstand predicted local seismic activity. Similarly, a professional engineer is the person qualified to address stability.

The department is proposing a new version of existing ARM 17.50.505(1)(g) in New Rule V(1)(e). ARM 17.50.505 is proposed to be repealed. The department is proposing to replace the phrase "reclamation and reuse of the land" in the existing rule with "closure, post-closure care, and planned uses of the land after the post-closure period." The phrases have similar meanings, but the proposed new phrase more precisely requires that the facility be located to allow for the planned post-closure use. The current language can be interpreted to allow location for any use.

The department is proposing in New Rule V(1)(c) and (j) to adopt language allowing it to require additional information if necessary to protect human health or the environment. The reason for this is the same as that described for the amendment to ARM 17.50.508.

The department is proposing not to cover Class III landfill units under this requirement, because the wastes in them are inert and they have no liners that could be disturbed by seismic activity. Unlined Class IV landfill units would similarly not be covered, because they do not have liners that would be disturbed.

NEW RULE VI ADOPTION OF FEDERAL LANDFILL OPERATING CRITERIA (1) Except as provided otherwise in [NEW RULE VIII], the department

adopts and incorporates by reference 40 CFR Part 258, subpart C, pertaining to landfill operating criteria.

(2) Except where inconsistent with the definitions in this subchapter, the definitions in 40 CFR 258.2 are adopted and incorporated by reference.

(3) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2006, edition of the Code of Federal Regulations (CFR).

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at <http://www.gpoaccess.gov/cfr/index.html>. Copies of the CFR are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

**NEW RULE VII DEFINITIONS** In this subchapter, the following terms have the meanings or interpretations shown below:

(1) "Active life" has the meaning given in ARM 17.50.502.

(2) "Aquifer" means any geologic formation, group of formations, or part of a formation capable of yielding significant quantities of ground water to wells or springs.

(3) "Class II landfill facility" has the meaning given in ARM 17.50.504.

(4) "Class III landfill facility" has the meaning given in ARM 17.50.504.

(5) "Class IV landfill facility" has the meaning given in ARM 17.50.504.

(6) "Closure" has the meaning given in ARM 17.50.502.

(7) "Conditionally exempt small quantity generator wastes" means wastes from a generator defined in 40 CFR 261.5.

(8) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(9) "Disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

(10) "Group II waste" has the meaning given in ARM 17.50.503.

(11) "Landfill" has the meaning given in ARM 17.50.502.

(12) "Post-closure care" has the meaning given in ARM 17.50.502.

(13) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(14) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(15) "Transfer station" means a solid waste management facility that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles (public, commercial, or private) and placed in other transportation units for movement to another solid waste management facility.

(16) "Unit" has the meaning given in ARM 17.50.502.

(17) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically

interconnected with this aquifer within the facility's property boundary.

(18) "Wetlands" has the meaning given in 40 CFR 232.2.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

NEW RULE VIII EXCEPTIONS AND ADDITIONS TO ADOPTION OF  
FEDERAL LANDFILL OPERATING CRITERIA (1) Whenever there is a reference  
in this subchapter to "landfill unit" or to a section of the CFR that contains the term  
"MSWLF unit," those terms mean a Class II landfill unit.

(2) Whenever there is a reference in this subchapter to a section of the CFR  
that contains the phrase "state director" or "director of an approved state," the  
phrase means the department.

(3) The landfill owner or operator shall submit for department approval an  
updated operation and maintenance plan pursuant to ARM 17.50.509(3).

(4) The requirements of 40 CFR 258.21(b) through (d) are replaced with: "(b)  
The owner or operator shall submit for departmental approval procedures for use of  
alternative daily cover materials and include those procedures in the operation and  
maintenance plan required in ARM 17.50.508 and 17.50.509. The following criteria  
also apply:

(i) the procedures for the use of alternative daily cover materials must  
provide for the application of six inches of approved cover soil at least once per  
week;

(ii) the owner or operator shall demonstrate in the operation and  
maintenance plan that the material used in, and the thickness of, the alternative daily  
cover will control disease vectors, fires, odors, blowing litter, scavenging, and  
minimize leachate without presenting a threat to human health or the environment;  
and

(iii) the owner or operator of a Class II landfill unit for which some portion will  
not receive additional waste within 90 days shall place on that portion an  
intermediate cover of at least one foot of approved cover soil, unless the owner or  
operator has submitted for department approval a demonstration that there is good  
cause for not covering."

(5) The requirements of 40 CFR 258.23(c)(3) are replaced with: "(3) Within  
60 days after detection, submit for department approval, and implement, a  
remediation plan for the control of methane gas releases, place a copy of the plan in  
the operating record, and notify the department that the plan has been  
implemented."

(6) The remediation plan in (5) must:

(a) describe the nature and extent of the problem and the proposed remedy;

(b) provide design plans for the proposed remedy; and

(c) for construction of all methane gas control systems required in this rule,  
contain a submission for department approval that includes plans, specifications,  
reports, and certifications to the same extent as required in [New Rule XVI].

(7) The requirements of 40 CFR 258.27(a) are replaced with: "(a) Cause a  
discharge of pollutants into state waters, including wetlands, that violates any  
requirement of the Montana Water Quality Act including, but not limited to, the

Montana pollutant discharge elimination system (MPDES) requirements found in ARM Title 17, chapter 30, subchapter 13."

(8) The requirements of 40 CFR 258.28(a) are replaced with: "(a) Bulk or non-containerized liquid waste may not be placed in a Class II landfill unit unless approved in advance by the department, and:".

(9) 40 CFR 258.28(a)(3), pertaining to Project XL, is not adopted and incorporated by reference.

(10) The following requirements concerning deed notations apply to a solid waste management facility:

(a) Before the initial receipt of waste at the facility or, if the facility is licensed and accepting waste on [THE EFFECTIVE DATE OF THIS RULE], by 50 days after [THE EFFECTIVE DATE OF THIS RULE], the owner of the land where a facility is located shall submit for department approval a notation on the deed to that land, or some other instrument that is normally examined during title search. The notation on the deed must be submitted to the department on a form provided by the department and must be accompanied by a certified exhibit of the waste disposal perimeter that references the certificate of survey for the tract that encloses the facility. The notation on the deed must in perpetuity notify any potential purchaser of the land that:

- (i) the land has been used as a solid waste management system; and
- (ii) its use is restricted under 40 CFR 258.61(c)(3), which is adopted by reference in [NEW RULE XXII].

(b) If the department approves the notation and exhibit, it shall notify the owner by mail.

(c) Within ten days after the department mails the approval to the owner, the owner shall record that notation with the county clerk and recorder in the county where the property is located, and place a copy of the recorded notation and the exhibit in the operating record.

(d) The land use restrictions in (10)(a)(ii) apply during the post-closure care period and in perpetuity thereafter and are binding on all successors and assigns.

(11) Before the initial receipt of waste at a solid waste management facility, or within 60 days after the effective date of this rule if the facility is accepting waste, the owner or operator shall submit for department approval, and maintain in force during the active life, a policy of general liability insurance to cover bodily injury or property damage to third persons caused by sudden accidental occurrences at the facility in the amount of \$1 million per occurrence with an annual aggregate of \$2 million. The owner or operator shall place a copy of the approved policy in the operating record.

(12) The owner or operator of a solid waste management facility shall manage the following special wastes according to the following criteria:

- (a) asbestos-contaminated material, 40 CFR 61, subpart M, as adopted by reference in ARM 17.74.351;
- (b) infectious wastes, Title 75, chapter 10, part 10, MCA; and
- (c) any other special waste, as determined by the department to be necessary to protect human health or the environment.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

NEW RULE IX MONTANA-SPECIFIC OPERATING CRITERIA (1) In addition to the requirements of ARM 17.50.509, the owner or operator of a solid waste management facility shall satisfy the following general operating requirements:

(a) all solid waste management must be confined to areas within the facility that can be effectively maintained and operated in compliance with this subchapter. The areas to which waste is confined must be created and maintained by supervision, fencing, signs, or similar means approved by the department;

(b) the owner or operator shall take effective measures to control litter at landfill facilities;

(c) salvaging of materials by the public is prohibited unless the owner or operator submits for department approval a demonstration that it can be done in a manner protective of human health and the environment;

(d) resource recovery, recycling, and solid waste treatment facilities and components thereof must be designed, constructed, maintained, and operated to control litter, insects, rodents, odor, aesthetics, residues, wastewater, and air pollutants;

(e) a container at a transfer station used as part of a management system for Group II solid wastes must be maintained and kept in a sanitary manner and emptied at least once per week; and

(f) solid waste management facilities must be designed, constructed, and operated in a manner to prevent harm to human health and the environment.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

NEW RULE X MONTANA-SPECIFIC OPERATING CRITERIA FOR CLASS III LANDFILL UNITS (1) The owner or operator of a Class III landfill unit:

(a) shall accept only Group III wastes;

(b) shall cover the wastes at least every three months with not less than six inches of a department-approved cover soil;

(c) may not place bulk or non-containerized liquid waste in the unit;

(d) shall comply with 40 CFR 258.24 pertaining to air quality;

(e) shall comply with 40 CFR 258.25 pertaining to access;

(f) shall comply with 40 CFR 258.26 pertaining to run-on and run-off control systems;

(g) shall, if the unit accepts waste tires, comply with the recordkeeping requirements of 40 CFR 258.29, general requirements of 75-10-250, MCA, and financial assurance requirements of 75-10-216, MCA; and

(h) shall comply with the requirements of [NEW RULE VIII] concerning a deed notation to the same extent as required for a Class II landfill facility.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA



NEW RULE XI MONTANA-SPECIFIC OPERATING CRITERIA FOR CLASS IV LANDFILL UNITS (1) The owner or operator of a Class IV landfill unit:

- (a) shall control litter, odor, aesthetics, wastewater, and leachate;
  - (b) shall apply an approved cover at least every three months unless more frequent cover is needed to control litter or minimize leachate;
  - (c) may not accept liquid paints, solvents, glues, resins, dyes, oils, pesticides, or any other household hazardous wastes. If these wastes have not been removed from buildings prior to demolition, the owner or operator of a Class IV landfill unit may not accept the wastes as demolition waste;
  - (d) shall provide cost estimates and financial assurance for closure and post-closure care to the same extent as required for a Class II landfill unit in ARM 17.50.540; and
  - (e) shall comply with the requirements of [NEW RULE VIII] concerning a deed notation to the same extent as required for a Class II landfill unit.
- (2) The owner or operator of a Class IV landfill unit shall comply with the:
- (a) waste screening requirements provided in 40 CFR 258.20;
  - (b) disease vector control requirements provided in 40 CFR 258.22;
  - (c) methane gas control requirements provided in 40 CFR 258.23;
  - (d) air criteria requirements provided in 40 CFR 258.24;
  - (e) access requirements provided in 40 CFR 258.25;
  - (f) run-on and run-off control systems requirements as provided in 40 CFR 258.26;
  - (g) surface water requirements provided in 40 CFR 258.27;
  - (h) bulk liquids requirements provided in 40 CFR 258.28;
  - (i) recordkeeping requirements provided in 40 CFR 258.29; and
  - (j) ground water monitoring requirements provided in ARM Title 17, chapter 50, [NEW SUBCHAPTER IV], unless the owner or operator obtains department approval of a no-migration petition pursuant to [NEW RULE XVII], or a demonstration that such monitoring is not required to protect human health and the environment.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: Proposed New Rules VI through XI would comprise New Subchapter II. The department is proposing the repeal of the existing solid waste program landfill operation rules and the adoption of a new subchapter, written in an incorporation by reference (IBR) format, that contains new landfill operation rules. The proposed new rules are equivalent to the existing landfill operation rules. The new rule format incorporates by reference sections of the CFR, and lists a few "Montana-specific" rules. The format change is being proposed for the following reasons:

- (a) the incorporation of future changes to the federal solid waste management regulations into state rules would be much easier. The incorporation of new federal regulations would be accomplished by annually updating the CFR publication date in New Rule VI(2);

(b) the "Montana-specific" requirements would be easier to recognize. The "Montana-specific" requirements are listed separately following the IBR statement in each new subchapter; and

(c) the existing solid waste management program rules contain much unnecessarily repeated statutory language, which would be deleted.

The definitions in New Rule VII are being proposed for the same reasons as set forth above in the statement of reasonable necessity for the amendments to ARM 17.50.502.

New Rule VIII(3) requires updates to operation and maintenance plans as required by ARM 17.50.509(3). The reason for the adoption of (3) is set forth in the statement of reasonable necessity for the adoption of ARM 17.50.509(3). Section 12(c) is being proposed to allow the department to require management, as special waste, those wastes determined to require special treatment in order to protect human health or the environment. The reason for this is the same as that described for the amendment to ARM 17.50.508.

The department is proposing to require in New Rule VIII(10) that the owner or operator of a solid waste management facility must record a deed notation before the initial receipt of waste, and that a facility that has already begun receiving waste must record a deed notation within 60 days after the rule's adoption. This is necessary for the same reasons provided for the amendment of ARM 17.50.508.

The department is also proposing to specify that a proposed deed notation must be submitted on a form supplied by the department and that it must contain an exhibit to a certificate of survey. The reason for these requirements is to make sure that all necessary information will be supplied, and that a certificate of survey, which has been prepared by a professional surveyor whose competence has been recognized by the state, is used as the reference in delineating the solid waste management facility boundaries.

The department is proposing to require that a deed notation give notice in perpetuity that the property was a solid waste management facility and that its use is subject to restrictions. This requirement is taken from the federal EPA's deed notation requirements in 40 CFR 258.60(i), which cover only Class II landfills. The department is proposing to require all solid waste management facilities to record deed notations because the waste in all such facilities needs to be isolated from the environment and a potential purchaser should be able to find out that solid waste was managed on the property and that its use is restricted before purchasing the property.

The department is proposing to add language that the land use restrictions referred to in the deed notation are binding during the post-closure period and in perpetuity, and that they are binding on successors and assigns. The reason for these provisions is that the federal EPA language from 40 CFR 258.61 referred only to the post-closure period, which is normally 30 years. Waste in landfills can take much longer than 30 years to break down, and must be isolated from the environment for longer. Therefore, it is necessary to have the land use restrictions to remain in place for perpetuity. It is necessary for the rule to state that the restrictions are binding on successors and assigns because the department has been advised by the National Association of Attorneys General and an assistant Colorado attorney general that the courts in some states have not enforced the

restrictions in deed notations because they are viewed as restraints on alienation of land, which are disfavored. To avoid such an interpretation, it is necessary to expressly state that the restrictions are binding on successors and assigns, which includes all future owners.

The department is proposing to require in New Rule VIII(11) that the owner or operator of a solid waste management facility must obtain an insurance policy before the initial receipt of waste and keep it in effect during the active life of the facility, and that a landfill facility that has already begun receiving waste must obtain an insurance policy within 60 days after the rule's adoption. The policy must be one of general liability insurance to cover bodily injury or property damage to third persons caused by sudden accidental occurrences at the facility in the amount of \$1 million per occurrence with an annual aggregate of \$2 million. This is necessary for the same reasons provided for the amendment of ARM 17.50.508.

The department is proposing to add a requirement in New Rule X(1)(i) that would require a Class III landfill facility to have a deed notation recorded before it can accept waste. The reason for this is the same as that set out in the reason for the amendments to ARM 17.50.508.

The department is proposing in New Rule XI(1)(d) and (e) that the owner or operator of a Class IV landfill facility shall obtain financial assurance pursuant to ARM 17.50.540, and record a deed notation pursuant to New Rule VIII(10). This is necessary for the same reasons provided for the amendment of ARM 17.50.508. The requirement of financial assurance for Class IV landfill facilities is not new. This requirement is currently found in ARM 17.50.542, which is proposed to be repealed.

#### NEW RULE XII ADOPTION OF FEDERAL LANDFILL DESIGN CRITERIA

(1) Except as provided otherwise in [NEW RULE XV and XVI], the department adopts and incorporates by reference 40 CFR Part 258, subpart D, pertaining to design criteria.

(2) Except where inconsistent with the definitions in this subchapter, the definitions in 40 CFR 258.2 are adopted and incorporated by reference.

(3) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2006, edition of the Code of Federal Regulations (CFR).

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at <http://www.gpoaccess.gov/cfr/index.html>. Copies of the CFR are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

#### NEW RULE XIII ADOPTION OF FEDERAL SMALL COMMUNITY

EXEMPTION FROM 40 CFR PART 258, SUBPART D (1) Except as provided otherwise in (2), the department adopts and incorporates by reference 40 CFR 258.1(f) pertaining to the small community exemption from federal design criteria.

(2) The requirements of 40 CFR 258.1(f)(1)(ii) are replaced with: "(ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation. For the purposes of this rule, the lack of a practicable waste management alternative may be demonstrated by the following:

(A) there is no access to a licensed Class II landfill within 100 miles of the community; and

(B) the cost per household of using an alternative disposal method, and the cost per household of complying with the requirements of the landfill design and operation distributed over the entire estimated active life of the landfill, will each exceed on an annual basis 1% of the median household income for the service area."

(3) Owners or operators shall demonstrate to the department in writing that the owners or operators meet the requirements of this rule to obtain approval for a small community exemption.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

NEW RULE XIV DEFINITIONS In this subchapter, the following terms have the meanings or interpretations shown below:

(1) "Active life" has the meaning given in ARM 17.50.502.

(2) "Class II landfill facility" has the meaning given in ARM 17.50.504.

(3) "Class IV landfill facility" has the meaning given in ARM 17.50.504.

(4) "Closure" has the meaning given in ARM 17.50.502.

(5) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(6) "Landfill" has the meaning given in ARM 17.50.502.

(7) "Lateral expansion" has the meaning given in ARM 17.50.502.

(8) "Leachate collection system" means an engineered structure, designed to collect leachate, that is located above a liner and below the waste in a landfill unit.

(9) "Leachate removal system" means an engineered structure that allows for the removal of leachate from a landfill unit. A leachate removal system may be, but is not necessarily, used in conjunction with a leachate collection system.

(10) "Remediation" means the act of reducing contamination to a level that is protective of human health and the environment.

(11) "Unit" has the meaning given in ARM 17.50.502.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

NEW RULE XV EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL LANDFILL DESIGN CRITERIA (1) Whenever there is a reference in this subchapter to "landfill unit" or to a section of the CFR that contains the term "MSWLF unit," the term means a Class II or Class IV landfill unit.

(2) Whenever there is a reference in this subchapter to a section of the CFR that contains the phrase "state director" or "director of an approved state," the

phrase means the department.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

NEW RULE XVI MONTANA-SPECIFIC CLASS II AND CLASS IV LANDFILL DESIGN CRITERIA (1) An owner or operator shall design and construct a Class II or Class IV landfill unit or lateral expansion with a liner and a leachate collection system that meets the criteria in 40 CFR 258.40 and applicable Montana ground water quality standards, and a leachate removal system. The following design criteria and exceptions also apply:

(a) The department may approve an alternative liner design that meets the standards in (1), and provides ground water protection equivalent to 40 CFR 258.40(a)(2);

(b) A leachate collection system is not required for a landfill unit that has a department-approved no-migration petition pursuant to [NEW RULE XVII];

(c) A liner component consisting of compacted soil or compacted "in situ" subsoil must provide a hydraulic conductivity no more than  $1 \times 10^{-7}$  cm/sec;

(d) A liner is not required for a Class IV landfill unit located within the approved ground water monitoring network of a licensed Class II landfill facility; and

(e) The department may require any other design standard determined to be necessary to meet the requirements of (1).

(2) An owner or operator of a Class II or Class IV landfill facility shall submit to the department for approval each landfill unit design plan, including any design specifications or applicable plans or documents developed pursuant to this chapter. The design plan must demonstrate compliance with the standards of (1) and (3).

(3) The owner or operator shall design and construct a Class II or Class IV landfill unit leachate collection and leachate removal system to:

(a) meet or exceed the requirements of [NEW RULE I];

(b) provide for accurate monitoring of the leachate level (measured to within one centimeter) on the liner or base of the unit, and leachate volume removed from the unit;

(c) whenever soil or "in situ" subsoil is compacted for use as a liner component, provide a minimum slope at the base of the overlying leachate collection layer equal to at least 2%, and a maximum side slope on the liner less than or equal to 33%;

(d) provide for secondary containment and monitoring of leachate in collection sumps and removal system components;

(e) provide for increased hydraulic head in the leachate removal system; and

(f) meet any other requirements determined by the department to be necessary to protect human health or the environment.

(4) The owner or operator may, if it obtains department approval, recirculate leachate to a Class II landfill unit only if it:

(a) meets or exceeds the requirements of [NEW RULE I];

(b) is constructed with a composite liner, leachate collection, and leachate removal system; and

(c) meets any other requirements determined by the department to be necessary to meet the requirements of (1).

(5) The owner or operator shall submit to the department for approval a construction quality control (CQC) and construction quality assurance (CQA) manual describing procedures that provide for the conformance of the design with the department approved design plans and specifications required by (2).

(6) Within 60 days after construction of the landfill unit is completed, the owner or operator shall submit to the department for approval a final CQC and CQA report that describes, at a minimum, construction activities and deviations, and conformance with the requirements in (5).

(7) Within 60 days after construction of the landfill unit is completed, the owner or operator shall submit a certification, by an independent Montana licensed professional engineer, that the project was constructed according to the requirements of (2) and (5).

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: Proposed New Rules XII through XVI would comprise New Subchapter III. The department is proposing the repeal of the existing solid waste program landfill design rules and the adoption of a new subchapter, written in an incorporation by reference (IBR) format, which contains new landfill design rules. The proposed new rules are equivalent to the existing landfill design rules. The new rule format incorporates by reference sections of the CFR, and lists a few "Montana-specific" rules. The format change is being proposed for the following reasons:

(a) the incorporation of changes to the federal solid waste management regulations into state rules would be much easier. The incorporation of new federal regulations would be accomplished by annually updating the CFR publication date in New Rule XII(3);

(b) the "Montana-specific" requirements would be easier to recognize. The "Montana-specific" requirements are listed separately following the IBR statement in each new subchapter; and

(c) the existing solid waste management program rules contain much unnecessarily repeated statutory language, which would be deleted.

Proposed New Rule XIII is equivalent to the existing small community exemption rule in ARM 17.50.506(15) and (16). This rule is being proposed for repeal.

The definitions in New Rule XIV are being proposed for the same reasons as set forth above in the statement of reasonable necessity for the amendments to ARM 17.50.502.

The proposed requirement in New Rule XVI(2) that an owner or operator of a Class II or Class IV landfill facility shall submit to the department for approval each landfill unit design plan is not new. The requirement is found in existing ARM 17.50.506 which is proposed to be repealed.

The reason for the provisions in proposed New Rule XVI(3)(f) and (4)(c), that authorize the department to require more information if necessary to determine that a design will meet standards or protect human health or the environment, is the

same as that set forth in the statement for the amendments to ARM 17.50.508.

The requirement in proposed New Rule XVI(7), that a final CQC/CQA report and an engineer's certification that the landfill unit was constructed according to its design must be submitted to the department within 60 days after construction is completed, is necessary to ensure that the department receives the report and certification in a timely manner to determine if the landfill unit was constructed according to the approved design.

NEW RULE XVII ADOPTION OF FEDERAL LANDFILL GROUND WATER MONITORING AND CORRECTIVE ACTION

(1) Except as provided otherwise in [NEW RULE XIX], the department adopts and incorporates by reference 40 CFR Part 258, subpart E, pertaining to ground water monitoring and corrective action.

(2) Except where inconsistent with the definitions in this subchapter, the definitions in 40 CFR 258.2 are adopted and incorporated by reference.

(3) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2006, edition of the Code of Federal Regulations (CFR).

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at <http://www.gpoaccess.gov/cfr/index.html>. Copies of the CFR are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-204, MCA

IMP: 75-10-204, 75-10-207, MCA

NEW RULE XVIII DEFINITIONS In this subchapter, the following terms have the meanings or interpretations shown below:

(1) "Aquifer" has the meaning given in [NEW RULE III].

(2) "Class II landfill facility" has the meaning given in ARM 17.50.504.

(3) "Class IV landfill facility" has the meaning given in ARM 17.50.504.

(4) "Closure" has the meaning given in ARM 17.50.502.

(5) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(6) "Disposal" has the meaning given in 75-10-203(3), MCA.

(7) "Landfill" has the meaning given in ARM 17.50.502.

(8) "Lateral expansion" has the meaning given in ARM 17.50.502.

(9) "Post-closure care" has the meaning given in ARM 17.50.502.

(10) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

(11) "Unit" has the meaning given in ARM 17.50.502.

(12) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

AUTH: 75-10-204, MCA  
IMP: 75-10-204, 75-10-207, MCA

NEW RULE XIX EXCEPTIONS AND ADDITIONS TO ADOPTION OF  
FEDERAL LANDFILL GROUND WATER MONITORING AND CORRECTIVE

ACTION (1) Whenever there is a reference in this subchapter to "landfill unit" or to a section of the CFR that contains the term "MSWLF unit," the term means a Class II or Class IV landfill unit.

(2) Whenever there is a reference in this subchapter to a section of the CFR that contains the phrase "state director" or "director of an approved state," the phrase means the department.

(3) The requirements of 40 CFR 258.51(c)(1) are replaced with: "(1) The owner or operator of a Class II or Class IV landfill unit shall:

(i) submit a ground water monitoring systems plan to the department for approval that includes:

(A) the location, number, depth, design, installation, development, and decommission of any monitoring wells;

(B) plans for the design, installation, development, and decommission of piezometers or other measurement, sampling, and analytical devices;

(C) discussions of the anticipated ground water monitoring system and schedule of sampling for closed portions of the facility, if applicable; and

(D) any other information determined by the department to be necessary to protect human health or the environment;

(ii) update and submit to the department for approval the ground water monitoring systems plan at least every three years, or as frequently as required by the department for facilities under corrective action. The owner or operator of a closed facility shall update the ground water monitoring systems plan at least every ten years;

(iii) notify the department that the approved ground water monitoring systems plan has been placed in the operating record; and

(iv) provide any other information determined by the department to be necessary to protect human health or the environment; and".

(4) The requirements of 40 CFR 258.53(a) are replaced with: "(a) The ground water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground water quality at the background and downgradient wells installed in compliance with 40 CFR 258.51(a). The owner or operator of a facility shall notify the department that the approved sampling and analysis plan has been placed in the operating record. The owner or operator shall submit to the department for approval a sampling and analysis plan that documents sampling and analysis procedures and techniques for:

(i) sample collection;

(ii) sample preservation and shipment;

(iii) analytical procedures;

(iv) chain of custody control;

(v) quality assurance and quality control; and



(vi) any other matter determined by the department to be necessary to protect human health or the environment."

(5) The requirements of 40 CFR 258.55(h)(1) are replaced with: "(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under Montana ground water quality standards, the MCL for that constituent;"

(6) The requirements of 40 CFR 258.56(a) are replaced with: "(a) Within 90 days after finding that any of the constituents listed in 40 CFR 258, Appendix II, has been detected at a statistically significant level exceeding the ground water protection standards defined under 40 CFR 258.55(h), 40 CFR 258.55(i), or applicable Montana ground water quality standards, the owner or operator of a facility shall initiate an assessment of corrective measures. Within 180 days after finding that any of the constituents listed in 40 CFR 258, Appendix II, has been detected at a statistically significant level exceeding the ground water protection standards defined under 40 CFR 258.55(h), 40 CFR 258.55(i), or applicable Montana ground water quality standards, the owner or operator shall submit to the department for approval an assessment of corrective measures plan that addresses the criteria listed in 40 CFR 258.56(c) and any other criteria determined by the department to be necessary to protect human health or the environment."

(7) The requirements of 40 CFR 258.57(a) are replaced with: "(a) Based on the results of the corrective measures assessment conducted under 40 CFR 258.56, the owner or operator of a facility shall:

(i) select a remedy that, at a minimum, meets the standards listed in 40 CFR 258.57(b);

(ii) submit to the department for approval a selected remedy report describing how the selected remedy would meet the standards in 40 CFR 258.57(b) through (d), and how it would be implemented;

(iii) submit design plans for the selected remedy, and construction quality control (CQC) and construction quality assurance (CQA) plans according to [NEW RULE XVI];

(iv) submit the selected remedy report to the department within 90 days from the date of the department's approval of the assessment of corrective measures plan required in (6); and

(v) notify the department that the selected remedy report, design plans, and CQC and CQA plans have been placed in the operating record."

(8) The following provision is added as (4) to the general implementation of the corrective action program requirements in 40 CFR 258.58(a): "(4) The owner or operator of a facility shall submit to the department, by April 1 of each year, an annual corrective measures progress report. The progress report must cover the preceding 12-month period. The progress report must include the following information:

(i) a description of all corrective action work completed;

(ii) all relevant sampling and analysis data;

(iii) summaries of all deviations from the selected remedy;

(iv) summaries of all problems or potential problems encountered and any actions taken to rectify the problems;

(v) an updated schedule for achieving compliance with all applicable standards; and

(vi) any other information determined by the department to be necessary to protect human health or the environment."

(9) The requirements of 40 CFR 258.58(b) are replaced with: "(b) An owner or operator of a facility may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of 40 CFR 258.57(b) are not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques that:

(i) are developed by following the procedures in 40 CFR 258.57(b) through (d); and

(ii) could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under 40 CFR 258.58(c)."

AUTH: 75-10-204, MCA

IMP: 75-10-204, 75-10-207, MCA

NEW RULE XX MONTANA-SPECIFIC HYDROGEOLOGIC AND SOILS CHARACTERIZATION (1) The owner or operator of a facility required to monitor ground water shall prepare a site-specific hydrogeologic and soils report, pursuant to (2), for the facility. The following criteria and exceptions also apply:

(a) a Class IV landfill unit located within the ground water monitoring network of a licensed Class II landfill is not required to submit a hydrogeologic and soils report;

(b) an applicant for a new solid waste management facility license or lateral expansion shall submit a department-approved hydrogeologic and soils report with the license application; and

(c) the owner or operator of an existing facility or lateral expansion shall submit to the department for approval a hydrogeologic and soils work plan, that describes the proposed sampling, analysis, and collection methods for the data required in (2), within the following time frames:

(i) draft work plan(s) must be submitted no later than 90 days after the department mails a notification to applicant that a hydrogeologic and soils report is required;

(ii) revised work plan(s) must be submitted no later than 30 days after the department comments are mailed to the applicant; and

(iii) final hydrogeologic and soils reports must be submitted no later than 180 days after the department's approval of the work plan is mailed by the department to the applicant.

(2) A hydrogeologic and soils report must include the following:

(a) descriptions of the regional and facility specific geologic and hydrogeologic characteristics affecting ground water flow beneath the facility including:

(i) regional and facility specific stratigraphy;

(ii) structural geology;

(iii) ground water potentiometric maps;

(iv) a discussion of any regional deep aquifers;

(v) regional and facility specific ground water flow patterns;

- (vi) characterization of seasonal variations in the ground water flow regime; and
- (vii) identification and description of the confining layers present, both above and below the saturated zone(s);
- (b) an analysis of any topographic features that influence the ground water flow;
- (c) a description of the hydrogeologic units that overlie the uppermost aquifer or that may be part of the leachate migration pathways at the facility including saturated and unsaturated units;
- (d) a description of hydrogeologically significant sand and gravel layers in unconsolidated deposits;
- (e) a description of manmade structures that affect the hydrogeology of the site such as:
  - (i) local water supply wells;
  - (ii) pipelines;
  - (iii) drains;
  - (iv) ditches; and
  - (v) septic tanks;
- (f) for each ground water monitoring well at the facility, the following information:
  - (i) location;
  - (ii) elevation;
  - (iii) well log;
  - (iv) sampling history; and
  - (v) operational history; and
  - (g) any other information determined by the department to be necessary to protect human health or the environment.
- (3) If soil borings are necessary to obtain the information required in (2), the soil borings must be conducted as follows:
  - (a) all borings must be within 300 feet of the limits of waste filling, if practical;
  - (b) borings must extend a minimum of 20 feet below the base of waste disposal areas, or to bedrock, whichever is less;
  - (c) the minimum required number of borings is as follows:
    - (i) 0-10 acres..... 15 borings;
    - (ii) 11-20 acres..... add one boring per additional acre;
    - (iii) 20-40 acres..... add one boring per additional two acres; and
    - (iv) 41 or more acres..... add one boring per additional four acres;
  - (d) 75% of the required number of borings may be conducted with a backhoe to a depth of ten feet; and
  - (e) borings not converted to wells are abandoned pursuant to [NEW RULE XXI].

AUTH: 75-10-204, MCA

IMP: 75-10-204, 75-10-207, MCA

NEW RULE XXI MONITORING WELL ABANDONMENT (1) The owner or operator of a solid waste management facility shall:

- (a) completely seal all abandoned borings, water supply wells, and monitoring wells with grout or bentonite to prevent future contamination of ground water. The sealing materials must be continuous, physically and chemically stable, and have a hydraulic conductivity of less than  $1 \times 10^{-5}$  cm/sec.;
- (b) immediately abandon, after drilling and completion of soil testing, all boreholes not completed as a monitoring well, piezometer, or water supply well;
- (c) for any borehole deeper than the well to be placed in it, seal with bentonite pellets or a bentonite slurry the portions of the borehole below the well screen; and
- (d) conduct all abandonment activities in accordance with ARM 36.21.670 through 36.21.678 and 36.21.810.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: Proposed New Rules XVII through XXI would comprise New Subchapter IV. The department is proposing the repeal of the existing solid waste landfill ground water rules and the adoption of a new subchapter, written in an incorporation by reference (IBR) format, that contains new landfill ground water rules. The proposed new rules are equivalent to the existing landfill ground water rules. The new rule format incorporates by reference sections of the CFR, and lists a few "Montana-specific" rules. The format change is being proposed for the following reasons:

- (a) the incorporation of future changes to the federal solid waste management regulations into state rules would be much easier. The incorporation of new federal regulations would be accomplished by annually updating the CFR publication date in New Rule XVII(3);
- (b) the "Montana-specific" requirements would be easier to recognize. The "Montana-specific" requirements are listed separately following the IBR statement in each new subchapter; and
- (c) the existing solid waste management program rules contain much unnecessarily repeated statutory language which would be deleted.

The definitions in New Rule XVIII are being proposed for the same reasons as set forth in the statement of reasonable necessity for the amendments to ARM 17.50.502.

The department is proposing in New Rules XIX through XXI to adopt language allowing it to require additional information if necessary to protect human health or the environment. The reason for this is the same as that described for the amendment to ARM 17.50.508.

NEW RULE XXII ADOPTION OF FEDERAL LANDFILL CLOSURE AND POST-CLOSURE CARE (1) Except as provided otherwise in [NEW RULE XXIV], the department adopts and incorporates by reference 40 CFR Part 258, subpart F, pertaining to closure and post-closure care.

(2) Except where inconsistent with the definitions in this subchapter, the definitions in 40 CFR 258.2 are adopted and incorporated by reference.

(3) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2006, edition of the Code of Federal Regulations (CFR).

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at <http://www.gpoaccess.gov/cfr/index.html>. Copies of the CFR are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

NEW RULE XXIII. DEFINITIONS In this subchapter, the following terms have the meanings or interpretations shown below:

- (1) "Active life" has the meaning given in ARM 17.50.502.
- (2) "Class II landfill facility" has the meaning given in ARM 17.50.504.
- (3) "Class III landfill facility" has the meaning given in ARM 17.50.504.
- (4) "Class IV landfill facility" has the meaning given in ARM 17.50.504.
- (5) "Closure" has the meaning given in ARM 17.50.502.
- (6) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.
- (7) "Landfill" has the meaning given in ARM 17.50.502.
- (8) "Lateral expansion" has the meaning given in ARM 17.50.502.
- (9) "Post-closure care" has the meaning given in ARM 17.50.502.
- (10) "Unit" has the meaning given in ARM 17.50.502.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

NEW RULE XXIV. EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL LANDFILL CLOSURE AND POST-CLOSURE CARE (1) Whenever there is a reference in this subchapter to "landfill unit" or to a section of the CFR that contains the term "MSWLF unit," the term means a Class II or Class IV landfill unit.

(2) Whenever there is a reference in this subchapter to a section of the CFR that contains the phrase "state director" or "director of an approved state," the phrase means the department.

(3) The requirements of 40 CFR 258.60(c) are replaced with: "(c) The owner or operator of a facility shall submit a closure plan to the department for approval that describes the steps necessary to close all Class II and Class IV landfill units and lateral expansions at any point during their active life in accordance with the cover design requirements in 40 CFR 258.60(a) or (b), as applicable. The closure plan must include the following information and any other information determined by the department to be necessary to protect human health or the environment:".

(4) The requirements of 40 CFR 258.60(e) are replaced with: "(e) Prior to beginning closure of each Class II or Class IV landfill unit as specified in 40 CFR 258.60(f), an owner or operator of a facility shall submit a notice of the intent to close

the unit to the department and place the notice in the operating record."

(5) The requirements of 40 CFR 258.60(i) are not adopted.

(6) The introductory paragraph of 40 CFR 258.61(c) is replaced with: "(c) The owner or operator of a Class II or Class IV landfill unit shall submit a post-closure plan to the department for approval that includes the following information and any other information determined by the department to be necessary to protect human health or the environment:".

(7) The owner or operator of a facility shall amend the closure or post-closure plan whenever changes in operation and maintenance plan or facility design plan or events that occur during the active life of the landfill significantly affect the closure or post-closure plan. The owner or operator shall also amend the closure or post-closure plan whenever there is a change in the expected year of closure. The owner or operator shall submit the necessary closure or post-closure plan amendments to the department for approval within 60 days after such changes or within a shorter period if determined by the department to be necessary to protect human health or the environment.

(8) Alternative final cover design, construction, and operation must meet the requirements in [NEW RULE I].

(9) For all closure and post-closure construction, the owner or operator of a facility shall submit for department approval plans, specifications, reports, and certifications to the same extent as required in [NEW RULE XVI].

(10) In addition to the requirements of 40 CFR 258.61, during the post-closure care period the owner or operator of a facility shall:

- (a) maintain adequate vegetative cover as specified in the closure plan;
- (b) maintain and operate all corrective action systems pursuant to [NEW RULE XIX];
- (c) annually inspect and report on the condition of all landfill systems; and
- (d) comply with any other post-closure care requirements determined by the department to be necessary to protect human health or the environment.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

#### NEW RULE XXV CLOSURE AND POST-CLOSURE CARE

REQUIREMENTS FOR CLASS III LANDFILL UNITS (1) A Class III landfill unit closure plan required under ARM 17.50.508 must include:

- (a) procedures for construction of two feet of final cover and placement of six inches of top soil;
- (b) procedures for grading and seeding to prevent erosion;
- (c) the deed notation specified in [NEW RULES VIII and X], unless all wastes are removed from the landfill unit and the owner or operator of a facility receives approval from the department to remove the notation from the deed; and
- (d) any other information determined by the department to be necessary to protect human health or the environment.

(2) A Class III landfill unit post-closure plan required under ARM 17.50.508 must include descriptions of procedures for:

- (a) maintaining the integrity of the final cover;

- (b) maintaining adequate vegetative cover;
- (c) erosion control; and
- (d) any other procedures or information determined by the department to be necessary to protect human health or the environment.

(3) The owner or operator of an existing Class III landfill unit shall submit for department approval closure and post-closure plans that meet the requirements of this rule within 60 days after [THE EFFECTIVE DATE OF THIS RULE].

(4) The owner or operator of a Class III landfill unit shall give notice of intent to close the landfill to the same extent as required of a Class II landfill unit in [NEW RULE XXIV], and shall close the landfill and conduct post-closure care in compliance with the closure and post-closure plans in this rule.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: Proposed New Rules XXII through XXV would comprise New Subchapter V. The department is proposing the repeal of the existing solid waste program landfill closure and post-closure care rules and the adoption of a new subchapter, written in an incorporation by reference (IBR) format, that contains new landfill closure and post-closure care rules. The proposed new rules are equivalent to the existing landfill closure and post-closure care rules. The new rule format incorporates by reference sections of the CFR, and lists a few "Montana-specific" rules. The format change is being proposed for the following reasons:

(a) the incorporation of future changes to the federal solid waste management regulations into state rules would be much easier. The incorporation of new federal regulations would be accomplished by annually updating the CFR publication date in New Rule XXII(3);

(b) the "Montana-specific" requirements would be easier to recognize. The "Montana-specific" requirements are listed separately following the IBR statement in each new subchapter; and

(c) the existing solid waste management program rules contain much unnecessarily repeated statutory language, which would be deleted.

The definitions in New Rule XXIII are being proposed for the same reasons as set forth in the statement of reasonable necessity for the amendments to ARM 17.50.502.

The department is proposing in New Rules XXIV and XXV to adopt language allowing it to require additional information, if necessary, to protect human health or the environment. The reason for this is the same as that described for the amendment to ARM 17.50.508. New Rule XXIV(5) would not adopt 40 CFR 258.60(i), which concerns deed notations for landfills, because deed notation requirements are being proposed for adoption in the operating criteria in New Rule VIII(10) and must be in place well before closure, which is the subject of New Rule XXIV.

The department has determined that it is necessary to require a land owner to record a deed notation before solid waste is accepted at a new solid waste management system or, for an existing system, within 60 days after the rule becomes effective. This is a requirement of the operating rules. The reason for this

requirement is set out in the reasons for the amendments to ARM 17.50.508 and New Rule VIII(10). The federal EPA's regulation at 40 CFR 258.60(i) requires that the deed notation be recorded not before accepting waste, but rather only at the end of the closure process. The department is proposing to adopt similar, but modified, requirements in the operating rules, and if the EPA's regulation requiring a deed notation at the end of closure were adopted by reference, it would conflict with the department's proposed new rule. This could lead to confusing and contradictory interpretations. Therefore, the department is proposing not to adopt the federal deed notation regulation in the closure rules.

6. The rules proposed for repeal are as follows:

17.50.505 STANDARDS FOR SOLID WASTE MANAGEMENT FACILITIES

(AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4197, Administrative Rules of Montana. This rule would be replaced by New Rule II Adoption of Federal Landfill Location Restrictions, New Rule IV Exceptions and Additions to Adoption of Federal Landfill Location Restrictions, and New Rule V Additional Location Restrictions.

17.50.506 DESIGN CRITERIA FOR LANDFILLS (AUTH: 75-10-204, MCA;

IMP: 75-10-204, MCA), located at page 17-4201, Administrative Rules of Montana. This rule would be replaced by New Rule XII Adoption of Federal Landfill Design Criteria, New Rule XV Exceptions and Additions to Adoption of Federal Landfill Design Criteria, and New Rule XVI Montana-Specific Design Criteria.

17.50.510 GENERAL OPERATIONAL AND MAINTENANCE

REQUIREMENTS--SOLID WASTE MANAGEMENT SYSTEMS (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4215, Administrative Rules of Montana. This rule would be replaced by New Rule VI Adoption of Federal Landfill Operating Criteria, New Rule VIII Exceptions and Additions to Adoption of Federal Landfill Operating Criteria, and New Rule IX Montana-Specific Operating Criteria.

17.50.511 SPECIFIC OPERATIONAL AND MAINTENANCE

REQUIREMENTS--SOLID WASTE MANAGEMENT SYSTEMS (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4217, Administrative Rules of Montana. This rule would be replaced by New Rule VI Adoption of Federal Landfill Operating Criteria, New Rule VIII Exceptions and Additions to Adoption of Federal Landfill Operating Criteria, and New Rule IX Montana-Specific Operating Criteria.

17.50.526 ENFORCEMENT (AUTH: 75-10-204, MCA; IMP: 75-10-204,

MCA), located at page 17-4255, Administrative Rules of Montana. This rule would be replaced by ARM 17.50.501(4).

17.50.530 CLOSURE REQUIREMENTS FOR LANDFILLS (AUTH: 75-10-

204, MCA; IMP: 75-10-204, MCA), located at page 17-4259, Administrative Rules of Montana. This rule would be replaced by New Rule XXIII Adoption of Federal Landfill Closure and Post-Closure Care, and New Rule XXV Exceptions and



Additions to Adoption of Federal Landfill Closure and Post-Closure Care.

17.50.531 POST-CLOSURE CARE REQUIREMENTS FOR CLASS II LANDFILLS (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4263, Administrative Rules of Montana. This rule would be replaced by New Rule XXIII Adoption of Federal Landfill Closure and Post-Closure Care, and New Rule XXV Exceptions and Additions to Adoption of Federal Landfill Closure and Post-Closure Care.

17.50.542 FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS IV LANDFILLS (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4301, Administrative Rules of Montana. This rule would be replaced by New Rule XI Specific Operating Criteria for Class IV Landfill Units.

17.50.701 PURPOSE AND APPLICABILITY (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA), located at page 17-4401, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.702 DEFINITIONS (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA), located at page 17-4402, Administrative Rules of Montana. This rule would be replaced by New Rule XVIII Definitions.

17.50.705 HYDROGEOLOGICAL AND SOILS STUDY (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA), located at page 17-4415, Administrative Rules of Montana. This rule would be replaced by New Rule XX Hydrogeological and Soils Study.

17.50.706 LOCATION AND NUMBER OF MONITORING WELLS (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA), located at page 17-4419, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.707 MONITORING WELL CONSTRUCTION (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4420, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.708 SAMPLING AND ANALYSIS PLAN (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4431, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground

Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.709 REPORTING AND PLANNING REQUIREMENTS (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4461, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.710 DEFINITION OF EXTENT OF CONTAMINATION (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA), located at page 17-4462, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.715 PHASED LANDFILL CONSTRUCTION (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4481, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.716 LATERAL LANDFILL EXPANSION (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4481, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.720 MONITORING DURING CLOSURE (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4485, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, New Rule XXIII Adoption of Federal Landfill Closure and Post-Closure Care, and New Rule XXV Exceptions and Additions to Adoption of Federal Landfill Closure and Post-Closure Care.

17.50.721 POST-CLOSURE MONITORING (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4485, Administrative Rules of Montana. This rule would be replaced by New Rule XXI Post-Closure Monitoring.

17.50.722 MONITORING WELL ABANDONMENT (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4485, Administrative Rules of

Montana. This rule would be replaced by New Rule XXII Monitoring Well Abandonment.

17.50.723 NO-MIGRATION DEMONSTRATION (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4486, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.724 MONITORING WELL NETWORK MAINTENANCE (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4486, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.725 DEPARTMENT APPROVAL REQUIRED (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4487, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.726 INSPECTIONS (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4487, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail to [rmartin@mt.gov](mailto:rmartin@mt.gov), no later than May 22, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

8. Norm Mullen, attorney, has been designated to preside over and conduct the hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk

vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ John F. North

JOHN F. NORTH  
Rule Reviewer

/s/ Richard H. Oppen

Richard H. Oppen, Director

Certified to the Secretary of State, April 14, 2008.